

NORTH ATLANTIC ENERGY CORPORATION

**Petition for Approval of Extension, Modification, Amendment
or Replacement of \$225,000,000 Term Agreement, for a
Short Term Debt Limit of \$260,000,000 and for Issuance of
up to \$240,000,000 of First Mortgage Bonds**

Order Approving Petition

O R D E R N O. 23,566

October 6, 2000

APPEARANCES: Catherine E. Shively, Esq. for North Atlantic Energy Corporation; Kenneth Traum for the Office of the Consumer Advocate; Mark A. Naylor, Finance Director, and Andrew Kosnaski, Economist, for the Staff of the New Hampshire Public Utilities Commission.

I. PROCEDURAL HISTORY

On August 23, 2000, North Atlantic Energy Corporation (NAEC or the Company) filed a petition with the New Hampshire Public Utilities Commission (the Commission) for approval under RSA Chapter 369 to extend, modify, amend, or replace its \$225,000,000 Term Credit Agreement, and, if necessary, to issue First Mortgage bonds in an amount up to \$240,000,000 to secure a new agreement. On August 29, 2000, NAEC amended its petition to include Commission approval of a short term debt limit of \$260,000,000 pursuant to RSA 369:7. On September 9, 2000, NAEC submitted attachments to its petition, along with the prefiled testimony of Randy A. Shoop, the Company's Assistant Treasurer. The Company requested

expedited treatment of its financing request in order to allow the Commission to consider its petition before the expiration of the Term Credit Agreement; requested additional time to file the information required by N.H. Admin. Rule Puc 308.11(b); and requested a waiver of the 14 day notice provision of N.H. Admin. Rule Puc 203.01.

The Commission issued an Order of Notice on September 5, 2000, granting additional time to file N.H. Admin. Rule Puc 308.11(b) information, granting the requested waiver of the 14-day notice requirement, scheduling a prehearing conference and technical session on September 14, 2000; directing that any petitions to intervene be filed by September 11, 2000 and establishing a procedural schedule for the remainder of the proceeding unless modified following the prehearing conference. The procedural schedule was consistent with the expedited treatment requested by the Company, providing for a hearing on the merits on September 29, 2000 and a Commission Order by October 6, 2000.

The Commission received no requests for intervention. The prehearing conference and technical session occurred as scheduled on September 14, 2000.

At the prehearing conference, there were no objections to the procedural schedule as established in the

Order of Notice. NAEC, Staff and the Office of the Consumer Advocate (OCA) stated their preliminary positions. The Company, Staff and OCA met for a technical session following the prehearing conference.

There were no data requests of NAEC. No other parties to the proceeding filed testimony.

A hearing on the merits was conducted on September 29, 2000, by the Commission's General Counsel, Gary Epler, who was appointed by the Commission and sitting as hearing examiner in accordance with RSA 363:17. Mr. Shoop testified at the hearing. There were no other witnesses.

II. POSITION OF THE PARTIES AND STAFF

A. NAEC

NAEC, through its witness Mr. Shoop, asked the Commission to approve its requests as being in the public interest. According to Mr. Shoop, NAEC's existing Term Credit Agreement expires on November 9, 2000. The \$200,000,000 currently outstanding under the existing agreement must be either repaid or refinanced on or before the November 9, 2000 expiration date. NAEC does not have sufficient cash to repay the \$200 million of outstanding Notes, make scheduled sinking fund payments on long term debt and maintain sufficient working capital. Thus, the outstanding Notes must be

refinanced through replacement of the current facility.

Mr. Shoop testified that NAEC approached the Agent Bank, Bank One, N.A. (Bank One), regarding replacement of the current facility. Bank One proposed that NAEC refinance the existing term loan with a \$200 million 364 day facility. It is currently anticipated that the lenders at closing will be Bank One, Barclays Bank, Fleet Boston and Union Bank of California, each with a \$50 million commitment.

Mr. Shoop indicated that a 364 day facility will enable NAEC to navigate the electric industry restructuring, and provide flexibility for NAEC to adjust its capital structure in the future to reflect the buydown of the Seabrook Power Contract. Additionally, bank market funding is not readily available beyond a 364 day term.

In connection with the restructuring of the electric industry, the Commission has approved the Public Service Company of NH (PSNH) restructuring settlement agreement (See Order Nos. 23,443, 23,549 and 23,550), which provides for PSNH to buy down the Seabrook Power Contract at the time of securitization, and for NAEC to ultimately divest itself of its interest in Seabrook Station. NAEC and PSNH expect that both securitization and the buydown of the Seabrook Power Contract will occur before the proposed one year expiration of

this facility. At that time, NAEC will use the proceeds associated with the power contract buydown to retire debt and equity as well as pay taxes due.

Mr. Shoop also discussed alternatives to the proposed facility, such as the issuance of long term debt. However, given the long term outlook for NAEC, he testified that the issuance of long term debt would be highly unusual and such bonds would be expensive and difficult to market. NAEC will be reducing debt levels in connection with the buydown of the Seabrook Power Contract and will be required to divest its interest in Seabrook Station. Issuance of long term debt for sale to the public would need to be appropriately structured to provide this flexibility. Another alternative discussed by Mr. Shoop was short-term extension of the existing facility. With the date of securitization and the buydown of the Seabrook Power Contract unknown, the need for debt in its capital structure prior to the Seabrook Station divestiture, and operating and working capital needs, NAEC does not believe a short term extension is a viable option. According to Mr. Shoop, the better choice is to refinance the Notes at this time in order to provide flexibility in rebalancing NAEC's capital structure in connection with restructuring, securitization and the buydown

of the Seabrook Power Contract as provided for in the PSNH restructuring settlement agreement.

Mr. Shoop indicated that the terms and conditions of the proposed 364 day facility are expected to be very similar to those of the existing facility. NAEC expects no major changes or modifications except for a change in the fees and borrowing spreads the banks may require, and the possible issuance of first mortgage bonds as security.

As set forth in Revised Attachment 2 to NAEC's petition, NAEC expects to pay a one time closing fee of .50%, or \$1 million, on the total amount of the facility, payable on the closing date to the Agent Bank for the pro rata account of each of the lenders. NAEC also anticipates payment of an arrangement fee of up to 0.25%, or \$500,000. The transaction costs are estimated to be \$170,000. If the issuance of First Mortgage Bonds to the participating banks as collateral security is required, the costs associated with the bond issuance are estimated at \$15,000.

Mr. Shoop testified that NAEC expects the borrowing options to be consistent with the existing agreement; either an Alternative Base Rate or Eurodollar based rate, plus the Applicable Margin. The Applicable Margin will be a grid based on either NAEC or PSNH First Mortgage Bonds, and is not

expected to exceed 2.50%. Based on current market conditions, the Applicable Margin for Eurodollar based borrowings is estimated to be 1.50%. NAEC also expects the interest rate in the event of default will not exceed the highest rate available under the facility, plus 2.00%.

According to Mr. Shoop, the fees and borrowing spreads under discussion with the banks are within the range of comparable transactions. However, there are few single asset nuclear companies with similar credit ratings, so there are few comparable transactions and a fair amount of judgment is exercised by the banks and NAEC. The Agent Bank has represented these fees as the required levels in order to compensate the banks for the level of risk inherent in NAEC and to encourage enough banks to participate in the replacement facility.

Mr. Shoop also indicated that NAEC expects that the terms and conditions of the proposed transaction will be similar to those of the existing Term Credit Agreement. A draft term sheet indicating the anticipated terms and conditions of the proposed financing was filed with the Commission on September 21, 2000.

Mr. Shoop noted that there are two major financial covenants in the current Term Credit Agreement. Under Section

7.01(j)(i), NAEC must maintain a common equity ratio of not less than 0.25 to 1.00. Under Section 7.01(j)(ii), NAEC is now required to maintain an interest coverage ratio of 1.50 to 1.00. As of June 30, 2000, NAEC had a common equity ratio of .327 to 1.00. As of June 30, 2000, NAEC had an interest coverage ratio of 2.07 to 1.00.

Similar to the existing agreement, if the Unit Contract between NAEC and PSNH is terminated or invalidated, or if the terms are amended or modified in a manner which a 66 2/3% majority of the lenders determine is adverse to their interests without their prior written consent, the entire principal amount of the facility, together with accrued interest, fees and other accrued and unpaid amounts will immediately become due and payable. The banks have also discussed a mandatory prepayment upon any sale or other disposition by NAEC of all or a portion of its ownership interest in Seabrook Station. Pursuant to the proposal, NAEC would prepay a portion of the original principal amount equal to the percentage of its interest in Seabrook Station that is sold or otherwise disposed of. Also, during the negotiations the banks discussed the potential for a \$100 million prepayment of the Notes in connection with the buydown of the Seabrook Power Contract.

Although NAEC is still negotiating with the lenders, Mr. Shoop indicated that the proposed terms and conditions are not expected to be materially different than those discussed in his testimony. He also indicated that the estimated fees and expenses are estimated maximum amounts, and he is hopeful that actual fees and expenses will be less than those estimated.

Mr. Shoop noted that in the current negotiations with the banks, the issue of first mortgage bond security has been discussed. NAEC is hopeful that the issuance of security will not be necessary. However, due to the regulatory time constraints, the request for issuance of first mortgage bonds needs to be made at this time. If first mortgage bond security is required, the exact amount of bonds to be issued will be based on the final pricing and market conditions at closing. If required, the first mortgage bonds would be issued to secure all amounts due under the proposed facility, including principal and interest and fees and expenses. In no event will the amount of first mortgage bonds issued exceed \$240 million.

Mr. Shoop also discussed NAEC's request for approval of a short term debt limit of \$260 million. Pursuant to N.H. Admin Rules Puc 307.05, NAEC may not issue short term debt in

excess of ten percent (10%) of its net fixed plant without prior Commission approval. Pursuant to Rule Puc 307.05, based on net fixed plant as of June 30, 2000, NAEC's short term debt limit is approximately \$52 million. In connection with this refinancing of long term debt with short term debt, NAEC is requesting an increase in its short term debt limit to a total of \$260 million: \$200 million for the refinanced short term notes and \$60 million for cash working capital and other short term purposes as necessary.

Finally, Mr. Shoop indicated that NAEC needs to have an initial Commission Order by October 6, 2000 and a final Commission Order not subject to rehearing by no later than November 8, 2000 to be in a position to replace the current Term Credit Agreement on the November 9, 2000 payment date. NAEC believes and alleges that the securities to be issued and transactions to be consummated will be consistent with the public good and that it is entitled to issue said securities and consummate such transactions under RSA 369 for the purposes set forth in its petition.

B. Commission Staff

The Commission Staff recommends approval of the proposed financing.

C. The Office of the Consumer Advocate

The Office of the Consumer Advocate (OCA) inquired as to whether lower cost financing options were explored by NAEC, such as the use of internally generated funds. As discussed above, the Company testified that internal funds were insufficient to adequately meet its financing needs. The OCA did not dispute the Company's representations on this question and does not oppose the Company's petition.

III. COMMISSION ANALYSIS

Under RSA 369:4, as interpreted by the New Hampshire Supreme Court in Appeal of Easton, the Commission must "determine whether, under all the circumstances the financing is in the public good - a determination which includes considerations beyond the terms of the proposed borrowing." Appeal of Easton, 135 N.H. at 23. NAEC has requested authority (i) to extend, modify, amend, or replace its existing Term Credit Agreement, (ii) if necessary, to issue First Mortgage bonds in an amount up to \$240,000,000 to secure a new agreement, and (iii) for a short term debt limit of \$260,000,000. Based on our review of the record, we find NAEC's financing proposal, as described in the Company's petition and attachments, Mr. Shoop's testimony and the draft term sheet, to be in the public interest.

The \$200,000,000 currently outstanding under the existing agreement must be either repaid or refinanced on or before the November 9, 2000 expiration date. NAEC does not have sufficient cash to repay the \$200 million of outstanding Notes, make scheduled sinking fund payments on long term debt and maintain sufficient working capital. Thus, NAEC needs to refinance the amount due. Given the current status of electric utility industry restructuring in New Hampshire, the pending buydown of the Seabrook Power Contract and the proposed divestiture of NAEC's interest in Seabrook Station, the proposed 364 day facility is a reasonable refinancing vehicle. The proposed terms and conditions of the facility are not expected to be significantly different from those of the existing agreement, and the proposed fees and expenses are within the range of comparable transactions and are reasonable given NAEC's credit rating and status as a single asset nuclear company. Similarly, the proposed issuance of up to \$240 million of First Mortgage Bonds as collateral security for the proposed transaction (if necessary) is reasonable given NAEC's credit rating and status as a single asset nuclear company. Finally, approval of a short term debt limit of \$260 million for the Company is reasonable given the refinancing of \$200 million of long term debt with short term

debt, and the potential need for short term debt for cash working capital and other short term purposes.

Based on the foregoing, it is hereby

ORDERED, that the Commission hereby approves and authorizes, pursuant to RSA 369:1, 2, 3, 4 and 7, the extension, modification, amendment, or replacement of NAEC's existing \$225,000,000 Term Credit Agreement with a 364 day facility, upon such terms and conditions, and upon the payment of such fees and expenses as described in the Company's petition, revised attachments and testimony; and it is

FURTHER ORDERED, that the Commission hereby approves and authorizes, pursuant to RSA 369:1, 2, 3 and 4, the issuance of up to \$240 million of First Mortgage Bonds as collateral security for the proposed 364 day facility, as described in the Company's petition, attachments and testimony; and it is

FURTHER ORDERED, that pursuant to RSA 369:7, the Commission approves a short term debt for NAEC of \$260 million; and it is

FURTHER ORDERED, that NAEC shall submit final copies of the agreement for the 364 day facility no later than thirty days after finalizing the financing; and it is

FURTHER ORDERED, that, should the actions for which approvals have been granted herein not be exercised by the petitioner within 1 year of the date of this order, all such approvals shall be deemed withdrawn, null and void.

By order of the Public Utilities Commission of New Hampshire this sixth day of October, 2000.

Douglas L. Patch
Chairman

Susan S. Geiger
Commissioner

Nancy Brockway
Commissioner

Attested by:

Thomas B. Getz
Executive Director and Secretary